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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1968

No. 726

FRANK SUTTON, on behalf of himself and others similarly situated,

Appellant,

vs.

TOM ADAMS, as Secretary of State of the State of Florida and EARL FAIRCLOTH, as Attorney General of the State of Florida,

Appellees.

JURISDICTIONAL STATEMENT OF APPELLANT

MILTON E. GRUSMARK
Attorney for Appellant
1674 Meridian Avenue
Suite 311
Miami Beach, Florida 33139

IN THE

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FRANK SUTTON, on behalf of himself and others similarly situated,

Appellant,

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TOM ADAMS, as Secretary of State of the State of Florida and EARL FAIRCLOTH, as Attorney General of the State of Florida,

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JURISDICTIONAL STATEMENT OF APPELLANT

The decision of the Supreme Court of Florida sought to be reviewed is reported in 212 So.2d 1. A copy of the opinion appears as Appendix D.

GROUNDS ON WHICH JURISDICTION IS INVOKED

Nature of the Proceeding

Appellant FRANK SUTTON on behalf of himself and others similarly situated seeks review of the decision of the Supreme Court of Florida reversing a decision of the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida.

In its Final Decree the Circuit Court had declared unconstitutional Florida Statute 99.161(b), which prohibits political contributions by liquor licensees, except members of country clubs, fraternal, social and cultural organizations. The Supreme Court of Florida reversed the decision in favor of the validity of the Statute, holding that a reasonable relationship exists between the purpose of the Statute and the classes excluded from its prohibitions.

Review is sought pursuant to 28 U.S.C.A. 1257(2), Florida Statute 99.161(b) and the Fourteenth Amendment to the Constitution of the United States.

OPINIONS BELOW

The Final Decree of the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, dated October 5, 1967, was entered on October 5, 1967. It is unreported (Appendix C).

The decision of the Supreme Court of Florida sought to be reviewed was entered on June 5, 1968 (Appendix D). Petition for Rehearing (Appendix E) was denied on July 15, 1968 (Appendix F).

Notice of Appeal to the Supreme Court of the United States was filed on October 10, 1968, in the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, the Court possessed of the record, and a copy was filed in the Supreme Court of Florida.

Application for extension of time within which to docket this appeal was mailed to the Supreme Court of the United States on October 9, 1968 and resubmitted on October 16, 1968. Order was entered extending the time for docketing to November 12, 1968 (Appendix G).

Statute Conferring Jurisdiction

The statutory provision believed to confer jurisdiction of the appeal on this Court is 28 U.S.C.A. 1257(2) which states:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

Jurisdiction is conferred by the Fourteenth Amendment to the Constitution of the United States:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Jurisdiction is also conferred by Rule 10 of the Rules of the Supreme Court of the United States.

Cases Believed to Sustain Jurisdiction

Mayhue v. City of Plantation Florida, 375 F.2d 477

Morey v. Doud, 354 U.S. 457, 465, 77 S.Ct. 1344, 1 L.ed.2d 1485, 1491 (1957)

Smith v. Cahoon, 283 U.S. 533, 51 S.Ct. 582, 75 L.ed 1264 (1930)

Smith v. Ervin, 64 So.2d 166

Spencer v. Bryan, 87 Fla. 56, 99 So. 327

STATUTES INVOLVED

99.161(b) Florida Statutes

"No person holding a license for the sale of intoxicating beverages, nor any member of an unincorporated association holding such a license, nor any officer or director of a corporation holding such a license, shall make, directly or indirectly, any contribution of any nature to any political party or to any candidate for nomination for, or election to, any political office in the state; provided however that these prohibitions shall not apply to members of country clubs, fraternal, social, and cultural organizations."

104.27 Florida Statutes

"(1) Any person who knowingly violates the provisions of Section 99.161 shall be deemed guilty of a misdemeanor and subject to a fine of not more than one thousand dollars or to imprisonment for not more than six months.

In addition thereto —

(2) The nomination or election to office of any person who wilfully violates the provisions of Section 99.161, or cause to violate, may be declared void by the court of competent jurisdiction in which event the nomination for office shall be held as in other cases where a vacancy occurs.

(5) Any license for the sale of intoxicating beverages shall be subject to revocation by the state beverage department if any person holding such a license, or any member of an unincorporated association holding such a license, or any officer or director of a corporation which holds such a license, knowingly violates Section 99.161."

Florida Statute 561.15(1)

"Licenses shall be issued only to persons of good moral character, who are not less than twenty-one years of age. Licenses to corporations shall be issued only to corporations whose officers are of good moral character and not less than twenty-one years of age. There shall be no exemptions

Constitution of the State of Florida, Article VI Section 1.

SECTION 1. Electors.—Every person of the age of twenty-one years and upward that shall, at the time of registration, be a citizen of the United States, and that shall have resided and had his habitation, domicile, home and place of permanent abode in Florida for one year and in the county for six months, shall in such county

be deemed a qualified elector at all elections under this constitution. Provided however, the legislature may provide for voting in national elections for president and vice-president of the United States by persons who have become residents of the state of Florida but who have not yet fulfilled the residency requirements of electors.

QUESTION PRESENTED

A STATUTE IS UNCONSTITUTIONAL WHICH PROHIBITS A SPECIFIED GROUP OF CITIZENS FROM ENGAGING IN POLITICAL ACTIVITIES WHEN

(A) THE PROHIBITION IS SO VAGUE AS TO PREVENT ACTIVITIES FAR BEYOND THOSE CONTEMPLATED BY THE STATUTE, AND

(B) THE CLASSIFICATION OF THE GROUP IS NOT REASONABLY RELATED TO THE EVIL SOUGHT TO BE PREVENTED BY THE STATUTE.

STATEMENT OF THE CASE

FRANK SUTTON, on behalf of himself and others similarly situated filed a Complaint (App. A) for declaratory decree and other relief in the Circuit Court of the 11th Judicial Circuit in and for Dade County Florida against TOM ADAMS, as Secretary of State of the State of Florida and EARL FAIRCLOTH, as Attorney General of the State of Florida. The cause was transferred to the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida in Tallahassee.

The Complaint alleged that FRANK SUTTON, a duly qualified, registered voter in Florida, and holder of a liquor license issued by the State of Florida and of a Federal Import Permit, as well as a qualified elector and citizen of the United States, had been prohibited since 1951 by Florida Statute 99.161 from contributing in any manner to any political party or candidate for nomination or election to any political office.

In 1965 the law was amended, excluding from the prohibitions members of country clubs, fraternal, social and cultural organizations. FRANK SUTTON was not within the exclusion and thus was still within the prohibitions of the statute.

The Complaint also stated that Florida Statute 104.27 provided penalties for violation of Florida Statute 99.161 (b), including a fine of not more than $1,000.00 or imprisonment for not more than six (6) months.

The Complaint alleged that Florida Statute 99.161(b) was invalid, unconstitutional and void, and cited among the grounds that Florida Statute 561.15 permits liquor licenses to be issued only to persons of good moral character, and that Florida Statute 567 requires voter approval prior to the sale of alcoholic beverages in a county in Florida.

Plaintiff alleged deprivation of his rights to equal protection of law, discrimination in classification, and deprivations of the rights of free speech and assembly.

In addition, Plaintiff alleged that Florida Statute 99.161(b) as amended, was unconstitutionally vague and ambiguous and constituted an unlawful restriction of Plaintiff's right to vote and to support the candidate of his choice, by limiting his right to vote to the actual casting of his ballot without reasonable basis or classification.

The Complaint prayed that Florida Statute 99.161(b) be held unconstitutional because it was in conflict with the Constitution of the State of Florida, Declaration of Rights, Sections 1, 13 and 15 and Article VI, Section 1 of the Constitution of the State of Florida as well as Amendment XIV of the Constitution of the United States.

Defendants filed Answer denying the allegations of unconstitutionality (App. B).

The Circuit Court of Leon County entered Final Decree (App. C) declaring subsection 1(b) of Florida Statute 99.161, 1965, null, void and inoperative by virtue of the amendment added by the 1965 Legislature.

Defendants appealed directly to the Supreme Court of Florida, challenging the entry of the Final Decree and alleging as error the declaration that subsection 1(b) of 99.161 Florida Statute 1965 was null, void and inoperative since that section was severable. No other ground was argued.

In its Opinion filed June 5, 1968, (App. D) the Supreme Court of Florida reversed the decision of the lower court. The Supreme Court of Florida stated that the exclusions of members of certain organizations of a fraternal nature "simply excludes those organizations from the group licensees covered by the act, and prevents application of its prohibitions against contributions on the basis of affiliation of such licensees."

The Court held the classifications reasonable in light of the purpose of the act which was to prevent all undue influences from improper practice in the conduct of elections, improper practices to be decided by the Legislature.

Petition for Rehearing was filed by Plaintiff (App. E) asserting that the Court failed to consider provisions of the Statute other than exclusion of fraternal organizations, challenged on the basis of free speech, free election of representatives to state and federal government, ambiguity and deprivation of rights. The ambiguity of the phrase "contribution of any nature" was cited by the Petition to include non-monetary support, a vote and vocal support.

Petition for Rehearing was denied (App. F).

Order extending time for completion of docketing to November 12, 1968, was entered by Justice Hugo L. Black on October 22, 1968 (App. G).

The Federal Questions are Substantial

The Supreme Court of Florida in its Opinion and Denial of Petition for Rehearing upheld the validity of Florida Statute 99.161(b). The federal questions are substantial; they involve arbitrary discrimination in the prohibitions on voting contributions by liquor licensees by a State, without reasonable purpose or reasonable classification, repugnant to constitutional rights of equal protection and due process of law.

Appellant challenged Florida Statute 99.161(b) in its entirety. The trial court ruled only on the 1965 amendment pertaining to fraternal organizations, thereby upholding the validity of the remainder of the subsection. The trial court relied on *Smith v. Ervin*, 64 So.2d 166 as upholding the constitutionality of Florida Statute 99.161 prior to 1965. The Supreme Court of Florida had found only that "we hold only that the challenged act of the legislature is constitutional insofar as the attacks which have been made in this court upon it are concerned." Examination of that case disclosed that only subsections 4(a) and 7 were attacked.

Appellant contends due process was violated by arbitrary and unreasonable classification since relationship of the excluded fraternal organizations to the alleged purpose of the statute, which was to prevent improper practices, was not supported by the facts. Liquor licensees are carefully screened under the existing statutes, and there is no basis for holding that members of the fraternal organizations listed are different in any way from the remainder of liquor licensees insofar as improper practices are concerned.

Statutory discriminations must be based on differences that are reasonably related to the purpose of the act. *Morey v. Doud*, 354 U.S. 457, 465, 77 S.Ct. 1344, 1 L.ed.2d 1485, 1491 (1957); *Smith v. Cahoon*, 283 U.S. 533, 51 S.Ct. 582, 75 L.ed. 1264 (1930); *Mayhue v. City of Plantation Florida*, 375 F.2d 447.

The effect of the statute, Sec. 99.161, Florida Statutes, is to impose on some residents and voters of the State of Florida, limitations not placed upon others as to the subject regulated, to-wit: Political contributions.

Since the voters so limited are qualified electors and operators of legitimate businesses, there appears to be no real difference between them and voters who are permitted to make political contributions so as to fairly justify the classification and prohibition, and the statute in effect denies to certain voters of the State of Florida the equal protection of the laws guaranteed by the Federal Constitution. State ex rel. *Spencer v. Bryan*, 87 Fla. 56, 99 So. 327.

The subject matter of the statute is political contributions. The exclusion of the individuals involved in the enumerated businesses or occupations is arbitrary, and has no reasonable relation to the subject being regulated. There is no reasonable basis for distinguishing the electors so limited from any of the remaining electors who are permitted to make contributions. The classification is based merely on occupations or activities, all of which are legal and legitimate, and all of which are indistinguishable from occupations or activities of voters permitted to make political contributions.

That the legislation involved is patently arbitrary and capricious is clear from the fact that individuals who are prohibited from making contributions may themselves be candidates for office.

There is no law prohibiting an individual holding a license for the sale of intoxicating beverages from running for public office in the state. Nor is there any law prohibiting an individual from contributing his own money to his own candidacy. Here, is an obvious and irreconcilable conflict in the law. An individual holding a license for the sale of intoxicating beverages may run for state office

and contribute to his own campaign, yet at the same time the law purports to prohibit him from contributing to *any* candidate for nomination or election to any political office in the state.

Thus, the practical effect of the law is to limit and restrict an individual qualified for public office from attempting to obtain election to same. He is unable to employ his personal funds to advance his candidacy, and he is unable to receive political contributions from individuals similarly situated who may sympathize with his views and platform as a candidate.

In its practical application and effect the law not only prohibits political contributions by the prohibited classes but also destroys or unduly limits their right to qualify as candidates for political office in this state, by placing on them handicaps and restrictions not encountered by candidates who are not members of the prohibited classes.

There is no reason to distinguish between a liquor licensee who is, and a liquor licensee who is not, a member of a private club. Yet, the Florida Statute does make that distinction.

In the Circuit Court of Leon County it was held that the distinction was invalid and not based upon reason.

The vagueness of the language "contribution of any nature" creates additional constitutional infirmity. The phrase "of any nature" would clearly indicate that other assistance besides monetary assistance is prohibited. To illustrate: If one were to purchase time on a radio pro-

gram or television program to support a candidate using prominent citizens to influence the electorate, at least two people would be contributing. The first contributor would be the person who gave the money to purchase the time. The second contributor (not necessarily the same person) would be the person who spoke but did not give the money. The latter person is prohibited from speaking in support of a candidate under the staute if he is a liquor licensee. It is his speech and his appearance that creates the contribution and is forbidden.

In view of the foregoing it would appear that the same prohibition would exist against vocal support of a candidate in a social gathering, a bar, a street corner or in any fashion. Thus, freedom of speech is limited unconstitutionally.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this Court has jurisdiction of this appeal.

MILTON E. GRUSMARK
1674 Meridian Avenue
Miami Beach, Florida 33139

CERTIFICATE OF MAILING

I HEREBY CERTIFY that two true and correct copies of Jurisdictional Statement of Appellant were mailed to Earl Faircloth, Attorney General and Robert Chastain, Assistant Attorney General, Attorneys for Appellees, The Capitol, Tallahassee, Florida 32304, this ____ day of November, 1968.

MILTON E. GRUSMARK

APPENDIX

APPENDIX A

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA. IN CHANCERY. CASE NO. 66013015

FRANK SUTTON, on behalf of himself and others similarly situated,

Plaintiff,

vs.

TOM ADAMS, as Secretary of State of the State of Florida, and EARL FAIRCLOTH, as Attorney General of the State of Florida,

Defendants.

COMPLAINT FOR DECLARATORY DECREE AND OTHER RELIEF

COMES NOW the Plaintiff, FRANK SUTTON, on behalf of himself and others similarly situated, by and through his undersigned Attorney and files this his Complaint for Declaratory Decree and Other Relief and as and for a basis for such Complaint says:

I.

The Plaintiff, FRANK SUTTON, is a resident of Dade County, Florida, and over the age of twenty one (21) years.

The Defendant, TOM ADAMS, is the Secretary of State of the State of Florida, with offices at Tallahassee, Leon County, Florida, and in Miami, Dade County, Florida. By law, all candidates for State office are required to qualify with the Secretary of State and to make regular

reports to said Defendant containing the names and addresses of contributors to the election campaign and the amount contributed by each contributor.

The Defendant, EARL FAIRCLOTH, is the Attorney General of the State of Florida; he has offices in Tallahassee, Leon County, Florida, and in Miami, Dade County, Florida, and is made a party Defendant to this suit because it involves the construction of and validity and constitutionality of general law of the State of Florida.

II.

The Plaintiff, FRANK SUTTON, is the holder of license number 313, which is a license issued by the State of Florida permitting the sale of intoxicating beverages. He is also the owner and holder of a Federal Import Permit, permitting him to import spirituous wines and liquors for re-sale.

III.

Since 1951, in accordance with the provisions of Chapter 99 of the Florida Statutes, the Plaintiff has been prohibited from directly or indirectly contributing in any manner to any political party or candidate for nomination or election to any political office. The pertinent provisions of said Chapter provide:

> "(b) No person holding a license for the sale of intoxicating beverages, nor any member of an unincorporated association holding such a license, nor any officer or director of a corporation hold-

ing such a license, shall make, directly or indirectly, any contribution of any nature to any political party or to any candidate for nomination for, or election to, any political office in the State."

IV.

In 1965, said law was amended and now provides as follows:

"(b) No person holding a license for the sale of intoxicating beverages, nor any member of an unincorporated association holding such a license, nor any officer or director of a corporation holding such a license, shall make, directly or indirectly, any contribution of any nature to any political party or to any candidate for nomination for, or election to, any political office in the State; *provided however that these prohibitions shall not apply to members of country clubs, fraternal, social, and cultural organizations.*" *(Emphasis added)*

V.

The penalty for violation of the foregoing provisions of the law is contained in Section 104.27, Florida Statutes, which provides as follows:

"(1) Any person who knowingly violates the provisions of Sec. 99.161 shall be deemed guilty of a misdemeanor and subject to a fine of not more than one thousand dollars or to imprisonment for not more than six months.

In addition thereto—

(2) The nomination or election to office of any person who knowingly violates the provisions of Sec. 99.161, or whose campaign treasurer or deputy campaign treasurer knowingly violates the provisions of Sec. 99.161, shall be void, and the nomination or office shall be filled as in other cases where a vacancy occurs.

***

(5) Any license for the sale of intoxicating beverages shall be subject to revocation by the state beverage department if any person holding such a license, or any member of an unincorporated association holding such a license, or any officer or director of a corporation which holds such a license, knowingly violates Sec. 99.161. ***"

VI.

Plaintiff is a resident of the State of Florida, living in Florida for more than one (1) year prior to the institution of this suit and residing in Dade County for more than six (6) months, and is a duly qualified and registered voter in Florida. He is a qualified elector and has been a citizen of the United States for more than ten (10) years last past.

VII.

Plaintiff is desirous of giving political contributions to the candidate and political party of his choice.

He alleges and believes that the provisions of Section 99.161(b) of the Florida Statutes prohibiting political contributions by the individuals or officers named therein, are invalid, unconstitutional and void and that such provisions are contrary to the protection guaranteed by the Constitution of the State of Florida and the Constitution and laws of the United States, for the reasons set forth hereinafter.

VIII.

Under the provisions of Section 561.15 of the Florida Statutes, licenses for the sale of alcoholic beverages only to the persons of good moral character, or to corporations whose officers are of good moral character. Further, by law, no license under the beverage law shall be issued to any person who has been convicted within the past five years of any offense against the beverage laws of this state, or who has been convicted in the last past fifteen years of any felony in this state, or has been convicted in any other state or the United States, of an offense designated as a felony by such state or the United States, or to a corporation, any one of whose officers has been so convicted. In addition to the foregoing, applicants for liquor licenses must complete forms prescribed by the director of the Beverage Department and must file a set of fingerprints on regular United States department of justice forms for himself and the manager or person to be in charge of his business. Plaintiff alleges that by reason of the foregoing the good moral character of an applicant for a license for the sale of intoxicating beverages is established before said license is issued to him. He is discriminated against by reason of the fact that he is prohibited from making political contributions while operators of other type businesses, no matter what their background, are free to make political contributions.

IX.

Plaintiff alleges that by reason of the provisions of Chapter 567, Florida Statutes, the sale of alcoholic beverages is not permitted in any county in the State of Florida, without the prior approval thereof in an election by a majority of those legally voting to determine whether the sale of intoxicating beverages will be permitted or prohibited in the County. Despite this provision in the law, after the voters of a county have designated their willingness for the sale of alcoholic beverages in the County, and after an applicant has been approved by the Beverage Director of the State of Florida and granted a license for the sale of alcoholic beverages, the holder of such license is now prohibited from making political contributions. The holder of such license is thereby discriminated against by reason of the fact that he is prohibited from making political contributions while operators of other types of businesses which do not require the approval of a majority of the voters before such business may exist, are free to make political contributions.

X.

Plaintiff alleges that Section 99.161(b) is unconstitutional for the following additional reasons:

(a) Under the provision of the Declaration of Rights of the State of Florida and in particular Section 1 thereof, all men are equal before the law and have certain inalienable rights. Under the provisions of Chapter 99.161(b), Plaintiff is deprived of fundamental rights afforded other citizens of the State of Florida by virtue of his inability to contribute, as others may, to political campaigns.

(b) Under the provisions of Section 13 of the Declaration of Rights of the State of Florida, Plaintiff is assured the right to fully speak and write his sentiments on all subjects. Under the provisions of Section 99.161(b) of the Florida Statutes, Plaintiff is inhibited in his right to freedom of speech.

(c) Under the provision of Section 15 of the Declaration of Rights of the Constitution of the State of Florida, Plaintiff is granted the right given to all citizens to assemble together, to consult for the common good and to instruct his representatives. The effect of Section 99.161(b) of the Florida Statutes is to substantially deny Plaintiff that right asserted by the Constitution of the State of Florida.

(d) Under the provisions of Section 1, Article VI of the Constitution of the State of Florida, Plaintiff's rights as an elector are guaranteed. Section 99.161(b) of the Florida Statutes curtails those rights.

XI.

Plaintiff alleges that Section 99.161(b) as amended by the Legislature in 1965, is so vague and ambiguous as to be unconstitutional. Under the present provision of the law, one who holds a liquor license and is prohibited thereby from contributing to political campaigns or candidates may, avoid the proscription contained in the act merely by joining one of the types of organizations in the 1965 Amendment.

XII.

Plaintiff further alleges that Section 99.161(b) of the Florida Statutes is invalid, unconstitutional and void in that said Legislation constitutes an unlawful restriction of Plaintiff's right to vote and support the candidate of his choice, or the political party of his choice by limiting his right to vote to the actual casting of his ballot, only, thus depriving him of the right to support, contribute to or participate in elections as other citizens are permitted to do, without a reasonable basis and without reasonable classification. The denial to the Plaintiff of those rights is contrary to the guarantee of equal protection of law afforded by the Fourteenth Amendment to the Constitution of the United States as well as those provisions of the Constitution of the State of Florida, hereinabove set forth.

XIII.

Plaintiff desires to participate by contribution and otherwise in his rights and duties as a citizen of Florida and of the United States to the same degree as is permitted other citizens and residents. Nevertheless, so long as Section 99.161(b) and 104.27 remain as part of the general law of the State of Florida, without a judicial declaration of their invalidity and unconstitutionality, Plaintiff must remain in doubt of his rights to act in accordance with his conscience and beliefs in engaging in political activities to the same degree as permitted other citizens.

WHEREFORE, Plaintiff prays that this Honorable Court will:

1. Take jurisdiction of this cause and the parties hereto.

2. Construe and determine the validity and constitutionality of Section 99.161(b) of the Florida Statutes.

3. Upon Final Hearing hereof hold that Florida Statute 99.161(b) is in conflict with the Constitution of the State of Florida and in particular, Sections 1, 13 and 15 of the Declaration of Rights and Section 1, Article VI and/or with the Fourteenth Amendment to the Constitution of the United States, and that said Section 99.161(b) is unconstitutional, null, void and unenforceable.

4. That this Court will grant such other relief as it deems just and proper.

Milton E. Grusmark
Attorney for Plaintiff
407 Lincoln Road
Miami Beach, Florida.

APPENDIX B

ANSWER

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY, FLORIDA

NO. 67-183

FRANK SUTTON, on behalf of himself and others similarly situated,

Plaintiff,

v.

TOM ADAMS, as Secretary of State of the State of Florida, and EARL FAIRCLOTH, as Attorney General of the State of Florida,

Defendants.

Come now the Defendants, Earl Faircloth as Attorney General, and Tom Adams, as Secretary of State, and answer the Plaintiff's complaint as follows:

1. The Defendants admit the allegations in paragraph I of the Complaint.

2. The Defendants are without knowledge as to the allegations in paragraphs II and III of the Complaint.

3. The Defendants admit the allegations in paragraphs IV and V of the Complaint.

4. The Defendants are without knowledge as to the allegations contained in paragraph VI of the Complaint.

5. The Defendants are without knowledge as to the Plaintiff's desire as alleged in paragraph VII of the Complaint and deny the allegation in that paragraph that Section 99.161, (1), (b), Florida Statutes, is unconstitutional.

6. The Defendants admit the allegations in paragraphs 8 and 9 of the Complaint relative to the issuance of licenses to sell alcoholic beverages but deny the allegation that the provisions of Section 99.161 (1), (b), Florida Statutes, are discriminatory.

7. The Defendants deny the allegations in paragraph X of the Complaint that Section 99.161 (1), (b), Florida Statutes, is violative of the Declaration of Rights 1, 13 and 15, and Article VI, Section 1 of the Florida Constitution.

8. The Defendants deny the allegation in paragraph XI of the Complaint that Section 99.161 (1), (b), Florida Statutes, is so vague and ambiguous as to be unconstitutional.

9. The Defendants deny the allegation that Section 99.161 (1), (b), Florida Statutes, deprives the Plaintiff of his right to "vote and support the candidate of his choice," or that it deprives the Plaintiff any guarantee of equal protection under the Fourteenth Amendment to the United States Constitution.

10. The Defendants deny the allegation in paragraph XIII of the Complaint that there is any doubt as to Plaintiff's rights under Section 99.161, (1), (b), Florida Statutes.

WHEREFORE, the Defendants pray that this Honorable Court will enter an order dismissing this cause and granting such relief as the Court deems just and proper.

Respectfully submitted,
Earl Faircloth
Attorney General

Wilson W. Wright
Assistant Attorney General

Capitol Building
Tallahassee, Florida

In Proper Person and as
Attorneys for Defendant
Tom Adams, Secretary of State

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing answer has been mailed to Honorable Milton E. Grusmark, Attorney for Plaintiff, 407 Lincoln Road, Miami Beach, Florida, this 5th day of June, A.D., 1967.

Wilson W. Wright

APPENDIX C

FINAL DECREE

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA

NO. 67-183

FRANK SUTTON, on behalf of himself and others similarly situated,

Plaintiff,

-v-

TOM ADAMS, as Secretary of State of the State of Florida, and EARL FAIRCLOTH, as Attorney General of the State of Florida,

Defendants.

This cause came on for final hearing before the Court. The parties have agreed that the Plaintiff is a resident of Dade County, Florida, is the holder of a liquor license No. 313 issued by the State of Florida permitting the sale of intoxicating beverages. He is the owner and holder of a Federal import permit permitting him to import spirituous wines and liquors for resale. The parties agree further that Plaintiff is a registered and qualified voter in the State of Florida and a qualified elector who has been a citizen of the United States for more than ten years preceding the filing of this suit.

The Court finds the foregoing facts.

Plaintiff seeks a declaration that Section 99.161 (1) (b), Florida Statutes, is unconstitutional. The subsection involved is embodied with certain provisions enacted by the Legislature seeking to control election contributions by persons holding a license for the sale of intoxicating beverages.

> Prior to 1965, Section 99.161 (1) stated:
> "(b) No person holding a license for the sale of intoxicating beverages, nor any member of an unincorporated association holding such a license, nor any officer or director of a corporation holding such a license, shall make, directly or indirectly, any contribution of any nature to any poliitcal party or to any candidate for nomination for, or election to, any political office in the state."

In 1965 the Legislature amended the foregoing provision by an addition of the following:

> "provided however that these prohibitions shall not apply to members of country clubs, fraternal, social, and cultural organizations."

The contention of the Plaintiff is that the subsection under attack is unconstitutional in that no reasonable classification exists. The Court concludes that notwithstanding the fact that the constitutionality of Section 99.161, Florida Statutes, as written prior to 1965 was upheld in Smith v. Ervin, 64 So. 2d 166, the amendment added by the 1965 session of the Legislature is unconstitutional for the reasons as contended by the Plaintiff. It appears, however, that subsection (1) (b) of Section 99.161

is severable from the remainder of Section 99.161, since this is the only subsection that has a direct or adverse effect upon the Plaintiff and others similarly situated. It is, therefore,

ORDERED, ADJUDGED and DECREED as follows:

1. This Court has jurisdiction of the parties and the subject matter of this cause.

2. . Subsection (1) (b) of Section 99.161, Florida Statutes, 1965, is declared null, void and inoperative.

DONE and ORDERED, in Chambers at Tallahassee, Florida, Leon County, this 5th day of October, 1967.

/s/ HUGH M. TAYLOR
Circuit Judge

APPENDIX D

In The
SUPREME COURT OF FLORIDA
January Term, A. D. 1968

Case No. 36,913

TOM ADAMS, AS SECRETARY OF STATE OF THE STATE OF FLORIDA, et al.,

Appellants,

vs.

FRANK SUTTON, on behalf of himself and others similarly situated,

Appellees.

Opinion filed June 5, 1968

An Appeal from the Circuit Court for Leon County, Hugh M. Taylor, Judge

Earl Faircloth, Attorney General, and Robert A. Chastain, Assistant Attorney General, for Appellants

Milton E. Grusmark and Natalie Baskin, for Appellees

DREW, J.

Appellant in this case controverts a declaratory decree of the circuit court holding the following statute invalid under Sec. 1, 13, or 15, Decl. of Rights, Sec. 1, Art. VI, Fla. Const., or Amend, 14, U. S. Const.

> "(b) No person holding a license for the sale of intoxicating beverages, nor any member of an unincorporated association holding such a license, nor any officer or director of a corporation hold-

> ing such a license, shall make, directly or indirectly, any contribution of any nature to any political party or to any candidate for nomination for, or election to, any political office in the state; *provided however that these prohibitions shall not apply to members of country clubs, fraternal, social, and cultural organizations.*" (e.s.) Sec. 99.161(1)(b), F.S.

The decree states:

> "The contention of the Plaintiff is that the subsection under attack is unconstitutional in that no reasonable classification exists. The Court concludes that notwithstanding the fact that the constitutionality of Section 99.161, Florida Statutes, as written prior to 1965 was upheld in Smith v. Ervin, 64 So. 2d 166, the amendment added by the 1965 session of the Legislature is unconstitutional for the reasons as contended by the Plaintiff . . . Subsection (1)(b) of Section 99.161, Florida Statutes, 1965, is declared null, void and inoperative."

This statute, prohibiting political contributions by liquor licensees, was designed to apply both to individual licensees and to those affiliated with group licensees, either unincorporated associations or corporate license holders. The amendment condemned by the decree in this case provides "these prohibitions shall not apply to members of "certain organizations of a fraternal nature. This language, in our opinion, simply excludes those organizations from the group licensees covered by the act, and prevents application of its prohibitions against contributions on the basis of affiliation with such licensees. We do not overlook the contention that the amendment might be literally

construed, out of context, to provide that members of fraternal, social and cultural organizations shall be excluded from the prohibition against contributions, regardless of their status otherwise as individual or affiliate liquor licensees. Certainly this result was not intended and does not follow from our construction of the proviso, which by "these prohibitions" refers to prohibitions against contributions by affiliates of organization licenees.

Thus contrued, we think the amendment must be regarded as based on inherent distinctions between the specified organizations and others for which beverage licensees might serve a different purpose. We are presented with no evidence, argument or authority which would negate the existence of a reasonable relationship between the purpose of the act and the classes excluded. So far as plaintiff based his attack on alleged discrimination between liquor licensees and other business endeavors, the situation is one governed by principles well stated in an earlier opinion of this Court recognizing that:

> "... the regulation and control of the alcoholic beverage business is peculiarly a legislative function. In this connection, as in all similar situations, when the legislative branch of the government exercises a legislative power in the form of a duly enacted statute or ordinance it is not the function of a court to explore the wisdom or advisability of the enactment in order to bring its enforceability into question. To this end the limits of the court's authority is to measure the validity of the legislative enactment by the requirements of the controlling law. If those standards are met the legislation should be upheld." State v. Cochran, 114 So.2d 797, 800.

The Florida Constitution, Sec. 26 of Article 3, requires that laws be passed to prevent all undue influence from improper practice in the conduct of elections. Our decisions recognize that "what is an 'improper practice' is for the Legislature to ascertain and prohibit under adequate penalties, within the reasonable limitations implied in the exercise of all expressly stated legislative powers."[1]

The decree is accordingly reversed and the cause remanded for disposition in accordance with this opinion.
THOMAS, ROBERTS, ERVIN and ADAMS, JJ., concur
THORNAL, J., concurs in part and dissents in part with Opinion

CALDWELL, C.J., concurs in Opinion by THORNAL, J.

THORNAL, J., concurring in part and dissenting in part.

I would strike from the statute the underscored proviso quoted in the opinion by Justice Drew. The legislature might have intended what the opinion assumes but it certainly did not so state. I fear that the opinion merely supplies a judicial assumption of legislative intent, contrary to the expressed language of the enactment. The proviso, I think, is unconstitutional. I would strike it and permit the remainder of the statute to stand. I concur in part and dissent in part.

CALDWELL, C.J., concurs

APPENDIX E

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A. D. 1968

TOM ADAMS, as Secretary of State of the State of Florida, et al.,

Appellants,

vs.

FRANK SUTTON, on behalf of himself and others similarly situated,

Appellees.

PETITION FOR REHEARING

COMES NOW Appellee, by his undersigned attorney, and files this Petition for Rehearing, seeking a reconsideration of the Opinion of this Court, and as a basis for such petition, says:

1. The Court ruled on one phase of the case; that is, that the exclusion of members of various types of social and fraternal organizations from the restrictions of the statute is valid. This petition does not contend that the Court overlooked that phase of the question since it was specifically discussed.

2. The Court, however, did in its Opinion of June 5, 1968, fail to consider every other phase of the attack upon the statute made in the complaint filed in this case. It, therefore, overlooked and failed to consider all the contentions of unconstitutionality placed before the Circuit Judge who ruled on the case. It is axiomatic that a

Final Judgment or Decree will be affirmed if it is correct for any reason, and not only the reasons assigned in the decree of judgment itself.

3. Applying that principle to the case at bar, the following appears:

(a) The statute unconstitutionally prohibits freedom of speech;

(b) The statute unconstitutionally prohibits free participation in the election of representatives of the State Government, and in part, to the Federal Government;

(c) The statute is vague and ambiguous;

(d) The statute is an unconstitutional deprivation of rights in a manner unnecessary to secure the end desired.

4. No mention will be made of the phrase of the Statute which the Court discussed.

A liquor licensee is prohibited from giving a "contribution of any nature". In the consideration of that phrase in the case at bar, the ambiguity of the statute is clear. There is no definition of "contribution". As a matter of fact, other sections of the statute limit the amount of monetary contribution that may be made by any political contributor without publication. It could, therefore, reasonably be assumed that "contribution" refers to other than monetary support as well as monetary support. But the language is not clear, precise or definitive.

If "contribution" can be considered in its ultimate sense, the ultimate contribution to any candidate is a vote. The statute then not only prohibits a monetary gift by a liquor licensee but, if read nicely, prohibits a vote by a liquor licensee since a vote is certainly a contribution.

The statute obviously must include vocal support of a candidate, a contribution thus limiting freedom of speech as guaranteed by the Florida and Federal Constitutions.

QUERY: Must a liquor licensee refuse to discuss his political opinions seeking to persuade or dissuade others in their consideration of a State candidate for office or be guilty of giving a contribution of "any nature"?

5. The Court overlooked and failed to consider these basic attacks upon the statute which were raised from the outset in the complaint of the Appellee. The Chancellor below had these matters before him for consideration at the final hearing as appears from the Complaint and Answer. The limitation of his reasons for striking down the statute is consistent with the principle of constitutional laws that a court should go no further than necessary in declaring a statute or ordinance unconstitutional.

CONCLUSION

It is respectfully urged that a full consideration of the problem involved in Florida Statute 99.161 (b) has not been made by this Honorable Court, as appears from the Opinion of June 5, 1968. It is urged that reconsideration of the matter will be appropriate under the circumstances presented in this record.

Respectfully submitted,

MILTON E. GRUSMARK
Attorney for Appellee
1674 Meridian Avenue
Miami Beach, Florida 33139

Milton E. Grusmark

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petition for Rehearing was served by mail on Earl Faircloth, Attorney General, and Robert Chastain, Assistant Attorney General, Attorneys for Appellants, The Capitol, Tallahassee, Florida 32304, this 22nd day of June, 1968.

Milton E. Grusmark

APPENDIX F

IN THE SUPREME COURT OF FLORIDA
JULY TERM A.D. 1968
MONDAY, JULY 15, A.D. 1968

CASE NO. 36,913

TOM ADAMS, AS SECRETARY OF STATE OF THE STATE OF FLORIDA, ET AL,
Appellants

vs.

FRANK SUTTON, on behalf of himself and others similarly situated,
Appellees

On consideration of the Petition for Rehearing filed by Attorneys for Appellee,

IT IS ORDERED by the Court that said petition be, and the same is hereby, denied.

A TRUE COPY,

TEST:
SID J. WHITE
CLERK SUPREME COURT

(THE MANDATE IN THIS CAUSE HAS TODAY BEEN ISSUED AND MAILED TO THE CLERK OF THE CIRCUIT COURT FOR LEON COUNTY)

APPENDIX G

IN THE
SUPREME COURT OF THE UNITED STATES

No. _____

October Term, 1968

FRANK SUTTON, on behalf of himself and others similarly situated,

Appellants,

vs.

TOM ADAMS, as Secretary of State of the State of Florida, et al.

ORDER

UPON CONSIDERATION of the application of counsel for the appellants,

IT IS ORDERED that the time for docketing the appeal in the above-entitled case be, and the same is hereby, extended to and including November 12, 1968, without prejudice to the Court's consideration of whether this application has been filed in time.

/s/ Hugo L. Black
Associate Justice of the Supreme Court of the United States.

Dated this 22nd day of October, 1968.

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FILED
DEC 20 1968
JOHN F. DAVIS, CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1968

No. 726

FRANK SUTTON, On behalf of himself and others similarly situated,

Appellant,

vs.

TOM ADAMS, as Secretary of State of the State of Florida, and
EARL FAIRCLOTH, as Attorney General of the State of Florida,

Appellees.

Appeal from the Supreme Court of the State of Florida

MOTION TO AFFIRM

EARL FAIRCLOTH
Attorney General
ROBERT A. CHASTAIN
Assistant Attorney General
WILSON W. WRIGHT
Assistant Attorney General
The Capitol
Tallahassee, Florida 32304
Attorneys for Appellees

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1968

No. _____

FRANK SUTTON, On behalf of himself and others similarly situated,

Appellant,

vs.

TOM ADAMS, as Secretary of State of the State of Florida, and
EARL FAIRCLOTH, as Attorney General of the State of Florida,

Appellees.

Appeal from the Supreme Court of the State of Florida

MOTION TO AFFIRM

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The appellees move this Court to affirm the lower court's ruling in this cause, pursuant to Rule 16(b) of the Revised Rules of the Supreme Court of the United States,

on the grounds that the appeal herein does not present a substantial Federal question and that the judgment of the Supreme Court of the State of Florida rests on an adequate non-Federal basis.

STATEMENT

The appellant Frank Sutton, on behalf of himself and others similarly situated, filed suit seeking a declaratory decree to determine his rights as a licensed liquor dealer in the State of Florida under the provisions of Section 99.161 (1)(b), Florida Statutes. Mr. Sutton alleged, essentially, that the application of said statute to himself and others similarly situated was unconstitutional because of the prohibition on him and others similarly situated prohibiting a licensed liquor dealer from making, directly or indirectly, a contribution of any nature to any political party or to any candidate for nomination for or election to any political office in the state. The initial complaint further alleged that there was an unreasonable classification because of a proviso added to the statute in 1965 which stated the following:

> "provided however that these prohibitions shall not apply to members of country clubs, fraternal, social, and cultural organizations."

Based on the foregoing, the appellant herein argued in the lower court and the Supreme Court of the State of Florida the unreasonable classification existed because a

licensed liquor dealer cannot make a contribution, but if he is a licensed liquor dealer and is a member of a country club he can so make a contribution within the meaning of the proviso added to the statute in 1965. The circuit court in entering its order on the complaint for declaratory decree found, essentially, that the amendment added by the 1965 session of the Legislature of Florida is unconstitutional for the reason that no reasonable classification did in fact exist as contended by the appellant herein, and the circuit court declared subsection (1)(b) of Section 99.161, Florida Statutes, 1965, null, void and inoperative. (See appellants' Appendix C.)

On appeal to the Supreme Court of Florida, the Supreme Court reversed the decision of the circuit court in favor of the validity of the statute and held that a reasonable relationship did exist between the purpose of the statute and the classes excluded from its prohibitions. (See appellants' Appendix D.)

ARGUMENT

1.

THE APPEAL DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION.

The main thrust of the appellants' argument is that the statute in question, which prohibits a licensed liquor dealer from "making any contribution of any nature" in effect completely defranchises a licensed liquor dealer in that he cannot make a "contribution" in the form of a

speech, thereby taking away his freedom of speech, in the form of money, materials, supplies or make loans in support of a candidate for election or nomination, or in any other form which is considered to be something of value; and, further, in the ultimate form of making a "contribution" by voting for a candidate. Consistently, throughout the proceedings in this case, both at the trial level and on appeal, the appellant argues that the statement "or make directly or indirectly, any contribution of any nature" must mean the prohibition of all the beforelisted contributions for a candidate or nominee for office. The appellant, however, has not considered to the doctrine of statutory construction that statutes closely related must be read in *pari materia* and the Court's attention is directed to Section 99.161 (2)(a) and (b), which provides the following:

> "(a) No person shall contribute to a candidate for election or nomination to political office in the state, directly or indirectly, in moneys, material, supplies, or by way of loan, in an amount or value in excess of one thousand dollars in any primary or general election.
>
> "(b) No person shall give, furnish or contribute moneys, material, supplies or make loans in support of a candidate for election or nomination, through or in the name of another, directly or indirectly, in any primary or general election. The solicitation from and contributions by candidates and party executive committees to any religious, charitable, civic, eleemosy-

nary or other causes or organizations established primarily for the public good is expressly prohibited; provided that it shall not be construed as a violation of this section for a candidate to continue regular personal contributions to religious, civic or charitable groups of which he is a member or to which he has been a regular contributor for more than six months."

It is apparent from the foregoing quoted subsection of law, which is found in the same section of law as the subsection under assault, that when the two subsections are read in *pari materia* the word "contribution" means "monies, materials, supplies, loans, or something of value" and does not relate to a man's right to vote or his right to freedom of speech, so the only reasonable conclusion that the Court can place on the meaning of the word "contribution" found in Section 99.161 (1)(b), Florida Statutes, must be found within the four corners of all the law under consideration.

In this regard, the Florida Supreme Court was eminently correct in stating that pursuant to the constitution of the state of Florida, the legislature is empowered by Article III, section 26, to pass laws to prevent all undue influence from improper practice in the conduct of elections, and in so far as the appellant based his attack on alleged discrimination between liquor licenses and other business endeavors, the situation is one governed by principles well stated in an earlier opinion of the Florida Supreme Court in *State v. Cochran,* 114 So. 2d 797, at page 800, as follows:

"We should also retain in our thinking the proposition that the regulation and control of the alcoholic beverage business is peculiarly a legislative function. In this connection, as in all similar situations, when the legislative branch of the government exercises a legislative power in the form of a duly enacted statute or ordinance it is not the function of a court to explore the wisdom or advisability of the enactment in order to bring its enforceability into question. To this end the limits of the court's authority is to measure the validity of the legislative enactment by the requirements of the controlling law. If those standards are met the legislation should be upheld."

Your appellees submit, and would never argue to the contrary, that the appellant has the right to express his political desires and thoughts under his right to free speech, but he does not have the right to be a licensed liquor dealer. As more succinctly stated by the learned Honorable Mr. Justice Holmes in his descriptive dictum in *McAuliffe v. City of New Bedford*, 155 Mass. 216, 29 N.E. 517, "The petitioner (a policeman) may have a constitutional right to talk politics but he has no constitutional right to be a policeman."

The appellant also contends, however, that the proviso attached to Section 99.161 (1)(b), Florida Statutes, is unconstitutional in that no reasonable classification exists where the prohibitions in the statute do not apply to members of country clubs, social and fraternal associations and cultural organizations. This reasoning must fall since it is

common knowledge that country clubs, social, fraternal and cultural organizations often have liquor licenses for the dispensing of alcoholic beverages to the membership of the clubs and members of such clubs do not actively hold themselves out as persons holding a license for the sale of intoxicating beverages, but by virtue of being a member, officer, or director in such organizations, they would be caught up in the prohibition of the statute were it not for the saving proviso exempting them from such prohibition. The obvious intent of the legislature was to prohibit persons who hold a license for the sale of intoxicating beverages from making contributions to any political party or to any candidate for nomination for or election to any political office in the state.

2.

THE JUDGMENT RESTS ON AN ADEQUATE NON-FEDERAL BASIS.

The only remaining question to be treated in the appellant's jurisdictional statement is whether or not the prohibitions under Section 99.161 (1)(b), Florida Statutes, violate the appellant's constitutional rights under the Fourteenth Amendment for the reason that the practical effect of the statute would limit and restrict a licensed liquor dealer who might otherwise be qualified for public office from attempting to obtain election to same because he would be unable to employ his personal funds to advance his candidacy and he would be unable to receive

political contributions from other licensed liquor dealers similarly situated who may sympathize with his views and platform as a candidate. This question is effectively put to rest by this Court in the case of *Snowden v. Hughes,* 321 U.S. 1, 88 L. Ed. 497, where this Court held the right to become a candidate for state office is a right or privilege of state citizenship, not national citizenship, which alone is protected by the privileges and immunities of the Fourteenth Amendment.

With regard to the appellant's rights of equal protection clause of the Fourteenth Amendment of the Constitution of the United States with respect to the constitutional right of a candidate to run for public office, the Court stated in *Snowden,* supra, the following:

> "More than forty years ago this Court determined that an unlawful denial by state action of a right to state political office is not a denial of a right of property or of liberty secured by the due process clause. Taylor & Marshall v. Beckham, 178 US 548, 44 L ed 1187, 20 S Ct 890, 1009. Only once since has this Court had occasion to consider the question and it then reaffirmed that conclusion. Cave v. Missouri, 246 US 650, 62 L ed 921, 38 S Ct 334, as we reaffirm it now."

The ruling in *Snowden,* supra, has been cited with approval as late as 1967 in *Bynum v. Burns,* 379 F. 2d 229 (8th Circ.).

CONCLUSION

Your appellees respectfully conclude that the appellant has presented no substantial question for the decision of this Court and the judgment below rests on an adequate non-Federal basis and the decision of the Supreme Court of Florida should be affirmed.

Respectfully submitted,

EARL FAIRCLOTH
Attorney General

ROBERT A. CHASTAIN
Assistant Attorney General

WILSON W. WRIGHT
Assistant Attorney General

The Capitol
Tallahassee, Florida 32304

Attorneys for Appellees

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion to Affirm was served, by mail, on Milton E. Grusmark, Esq., 1674 Meridian Avenue, Suite 311, Miami Beach, Florida 33139, attorney for Appellant, this .... day of December, 1968.

Of Counsel

BRARY
S COURT U. S.

Office-Supreme Court, U.S.
FILED
FEB 13 1969
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

NO. 726

FRANK SUTTON, on behalf of himself and others similarly situated,

Appellant,

vs.

TOM ADAMS, as Secretary of State of the State of Florida and EARL FAIRCLOTH, as Attorney General of the State of Florida,

Appellees.

PETITION FOR REHEARING OF DISMISSAL OF APPEAL

MILTON E. GRUSMARK and
NATALIE BASKIN
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1674 Meridian Avenue
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On January 20, 1969, this Court dismissed the appeal for want of a substantial federal question. A copy of the decision is appended.

Appellant urges this Court to grant rehearing because substantial federal questions are raised by the denial of rights under the Constitution of the United States.

Constitutional rights and consequent federal questions are presented in this appeal concerning freedom of speech, voting in national elections, and due process of law.

I

The right to vote has been abridged by Florida Statute 99.161(1)(b). The right to vote is not limited to the mere casting of a ballot. Voters participate in national elections by electing as state officers qualified electors. There is no other manner by which a voter can participate in a presidential election. If the right to vote for electors is curtailed, the right to vote in national elections is equally abridged.

Federal rights are involved since federal elections are involved. The Florida resident participates in national elections through support of a state official, an elector, who then votes for president and vice-president of the United States.

II

The right to freedom of speech is denied by the challenged statute. The importance of this right to freedom of speech, particularly when that right is involved in an election, was affirmed by this court, Mills v. Alabama, 384 U.S. 214, 16 L.Ed.2d 484, 86 S.Ct. 1434 (1966). In that case the Court considered the right to publish an editorial on an election day as a violation of the Alabama Corrupt Practices Act. The Court stated:

> "Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs. This of course includes discussions of candidates, structures and forms of government, the manner in which government is operated or should be operated, and all such matters relating to political processes."

In their concurring opinion Mr. Justice Douglas and Mr. Justice Brennan stated that the rights of free speech and free press in a basic form were concerned, namely the right to express views on matters before the electorate.

The same needs and the same rights are concerned in the case at bar. The broad term "contribution" and its prohibition to a liquor licensee, severely restrict society as well as the licensee. The literal right to freedom of speech is violated because the licensee is prohibited not only from contributing in the form of speeches made by himself, but from hiring persons who may speak in whatever appropriate form is available as well.

III

A substantial federal question is raised by the challenge to Florida Statute 99.161 (1)(b) on the grounds that it is unconstitutionally vague, constituting a deprivation of due process of law.

Because the nature of prohibited contributions is undefined by the statute, there is no guideline for a liquor licensee to follow. Nevertheless, criminal sanctions are applied for violations: Florida Statute 104.27.

When the statute is read in pari materia with other portions of the statutes concerned as suggested by Appellees, it becomes clear that the legislature omitted the very definitions found in Section 99.161(2)(a)(b). The absence of clarifying definitions renders the statute vague.

The Court overlooked and failed to consider the fact that the argument that the statutes

should be read in pari materia supports Appellant's position and not Appellees' position.

It is contended that the specific inclusion of contributions that are prohibited in Section 99.161(2)(a) and (b) such as money, materials, supplies or loans are applicable to liquor licensees.

On the contrary, the challenged statute now provides for a distinction between the general public and the prohibitions contained in 99.161 (2)(a) and (b) and the prohibitions applicable to liquor licensees. In the statute under attack, a liquor licensee is not proscribed as is the general public merely from giving money, materials, loans, etc., he is prohibited from making a contribution "of any nature". The difference is the difference enacted by the legislature. Either the language "of any nature" is so meaningless as to be vague and unconstitutional, or it prohibits political support in any way. If it does, it is contrary to the philosophy stated in Mills, supra, and invades the constitutional rights of a liquor licensee.

In his opinion in the case at bar, Supreme Court of Florida Justice Thornal, concurring in part and dissenting in part, stated:

> "I would strike from the statute the underscored proviso quoted in the opinion by Justice Drew.

> The legislature might have intended what the opinion assumes but it certainly did not so state. I fear that the opinion merely supplies a judicial assumption of legislative intent, contrary to the expressed language of the enactment. The proviso, I think, is unconstitutional. I would strike it and permit the remainder of the statute to stand. I concur in part and dissent in part."

In Epperson v. Arkansas, ___U.S.___, ___S.Ct.___, 21 L.Ed.2d 228 (1968), this court was concerned with a vague statute. In his concurring opinion Mr. Justice Black stated:

> "It is an established rule that a statute which leaves an ordinary man so doubtful about its meaning that he cannot know when he has violated it denies him the first essential of due process. See, e.g., Connally v. General Construction Co., 269 U.S. 385, 391, 70 L.Ed. 322, 328, 46 S.Ct. 126 (1926)."

A further denial of due process of law arises from the absence of a reasonable classification for excluding liquor licensees from

exceptions to the statute available to members of country clubs, social and fraternal associations and cultural organizations. Refusal to permit members of corporations holding liquor licenses to make contributions permitted by members of corporations in the privileged category of corporations holding liquor licenses, is purely arbitrary.

The Supreme Court of Florida stated in its opinion that the statute was not meant to be interpreted literally, out of context. However, in the absence of a literal interpretation, and the absence of guidelines for any other interpretation, it is impossible for due process of law to be accorded.

IV

Under Epperson, supra, this Court will review constitutional questions concerning the propriety of a statute although those questions were not specifically ruled on by the state court.

In Epperson, supra, this Court decided issues brought before it on appeal, although the state court did not address itself to certain constitutional considerations. This court held its duty to be to decide the issues presented to it.

In the present case, the statute was declared unconstitutional by the trial court on one ground, so that other grounds were not

required to be considered. Reversal in the Supreme Court of Florida was limited to the State's assignments of error concerning only that ground covered in the final decree of the chancellor. Thus, there are questions of constitutionality which have not yet been decided by the courts. The serious question of the meaning of contributions of any nature was not decided in this case by the Supreme Court of Florida.

The procedurally limited nature of opinions rendered subsequent to the decision of the trial court has narrowed some issues and excluded consideration of others. It is respectfully suggested therefore that in the event this Court declines to decide questions raised at trial but not considered by the Supreme Court of Florida that the cause be remanded to afford the Florida court that opportunity. In that way Appellant will not be penalized for having convinced the trial court and thereby precluding his need to assign error. It is respectfully urged, however, that pursuant to Epperson, supra, this Court should decide the questions raised by appeal.

CONCLUSION

It is respectfully submitted that Petition for Rehearing should be granted.

MILTON E. GRUSMARK and
NATALIE BASKIN

By_____
Natalie Baskin

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Rehearing of Dismissal of Appeal was mailed to Earl Faircloth, Attorney General and Robert Chastain, Assistant Attorney General, Attorneys for Appellees, The Capitol, Tallahassee, Florida 32304, this____ day of February, 1969.

MILTON E. GRUSMARK and
NATALIE BASKIN
Attorneys for Appellant
1674 Meridian Avenue
Miami Beach, Florida 33139

By_____
Natalie Baskin

SUPREME COURT OF THE UNITED STATES

October Term, 1968.

SUTTON, ETC *v.* ADAMS, SECRETARY OF STATE OF FLORIDA, ET AL.

APPEAL FROM THE SUPREME COURT OF FLORIDA.

No. 726. Decided January 20, 1969.

PER CURIAM.

The appeal is dismissed for want of a substantial federal question.

MR. JUSTICE BLACK and MR. JUSTICE HARLAN would note probable jurisdiction and set the case for oral argument.

APPENDIX A

I HEREBY CERTIFY that the foregoing Petition for Rehearing is presented in good faith and not for delay.

MILTON E. GRUSMARK and
NATALIE BASKIN

By_____

APPENDIX B

SUPREME COURT OF THE UNITED STATES

October Term, 1968.

SUTTON, ETC *v.* ADAMS, SECRETARY OF STATE OF FLORIDA, ET AL.

APPEAL FROM THE SUPREME COURT OF FLORIDA.

No. 726. Decided January 20, 1969.

PER CURIAM.

The appeal is dismissed for want of a substantial federal question.

MR. JUSTICE BLACK and MR. JUSTICE HARLAN would note probable jurisdiction and set the case for oral argument.